

OPEN MEETING ITEM

COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION

ORIGINAL

DATE: MAY 19, 2008
DOCKET NO: RR-03639A-07-0607
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

UNION PACIFIC RAILROAD COMPANY (ALTER CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MAY 28, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JUNE 3 AND JUNE 4, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 THE UNION PACIFIC RAILROAD COMPANY
10 TO ALTER A CROSSING OF THE UNION
11 PACIFIC RAILROAD IN PINAL COUNTY,
12 ARIZONA AT PICACHO BOULEVARD.

DOCKET NO. RR-03639A-07-0607

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: March 26, 2008

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

13 APPEARANCES: Mssrs. Ronald M. DeBridiga, Jr. and Terrance L. Sims,
14 Beaugureau, Zukowski, Hancock, Stoll & Schwartz,
15 P.C. on behalf of the Union Pacific Railroad Company;
16 and

17 Mr. Charles H. Haines and Ms. Nancy Scott, Staff
18 Attorneys, Legal Division, on behalf of the Safety
19 Division of the Arizona Corporation Commission.

18 **BY THE COMMISSION:**

19 On October 19, 2007, the Union Pacific Railroad Company ("Railroad") filed with the
20 Arizona Corporation Commission ("Commission") an application for approval for the Railroad to
21 alter a crossing of the Railroad in Pinal County, Arizona by adding a second set of mainline tracks
22 ("Application"). The crossing is located at Picacho Boulevard at AAR/DOT 741 712W.

23 On December 13, 2007, by Procedural Order, a hearing was scheduled for March 26, 2008,
24 public notice ordered, and other filing dates established.

25 On March 6, 2008, Staff filed its report, which recommends approval of the Application.

26 On January 18, 2008, the Railroad filed certification that it had provided public notice of the
27 Application and hearing thereon pursuant to the terms of the Commission's Procedural Order. The
28 Railroad published notice in the *Casa Grande Dispatch*, a daily newspaper, and in the *Eloy*

1 *Enterprise*, a weekly newspaper, both newspapers of general circulation, in the vicinity of the Cities
2 of Casa Grande and Eloy, in Pinal County, respectively. The Railroad mailed, by certified U.S. mail,
3 copies of the Railroad's Application and the Commission's Procedural Order to the County Engineer
4 of Pinal County and to the Arizona Department of Transportation's ("ADOT") Manager of Utilities
5 and Railroad Engineering Section.

6 On January 15, 2008, the Chairman of the Pinal County Board of Supervisors filed a letter in
7 support of the Railroad's Application for its project at Picacho Boulevard.

8 On March 26, 2008, a full public hearing was held before a duly authorized Administrative
9 Law Judge of the Commission at its offices in Phoenix, Arizona. The Railroad and Staff were
10 present with counsel. At the conclusion of the hearing, the matter was taken under advisement
11 pending submission of a Recommended Opinion and Order to the Commission.

12 * * * * *

13 Having considered the entire record herein and being fully advised in the premises, the
14 Commission finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On October 19, 2007, the Railroad filed an Application which requested that the
17 Commission issue an Opinion and Order which approves the alteration of a crossing of the Railroad
18 by adding a second set of mainline tracks at Picacho Boulevard in Pinal County at AAR/DOT No.
19 741 712W.¹

20 2. Pursuant to the Commission's Procedural Order, the Railroad provided public
21 notification of its Application and the date of hearing by publishing notice in two newspapers of
22 general circulation, the *Casa Grande Dispatch*, a daily newspaper, and in the *Eloy Enterprise*, a
23 weekly newspaper, in the vicinity of where the crossing is located. Additionally, the Railroad mailed
24 notice of the Application and hearing thereon to ADOT's Manager of the Utilities and Railroad
25 Engineering Section and to the County Engineer of Pinal County.
26

27
28 ¹ According to the Staff Report, on February 28, 2007, subsequent to the filing of the Application, the Railroad, Staff and representatives of Pinal County participated in a diagnostic review of the proposed improvements at Picacho Boulevard.

1 3. The hearing was held as scheduled on March 26, 2008.

2 4. Pinal County is the road authority for the Picacho Boulevard crossing.

3 5. The Commission has received a letter signed by the Chairman of the Pinal County
4 (“County”) Board of Supervisors (“Board”) which indicates the County’s support for the proposed
5 double-track project at Picacho Boulevard.²

6 6. The crossing project involves a crossing of the Railroad’s tracks on Picacho
7 Boulevard, a paved two-lane road which begins at the Interstate 10 (“I-10”) frontage road on the
8 east side of I-10 and crosses the Railroad’s tracks in a northwesterly direction and extends
9 through the Town of Picacho.

10 7. The Application provides for the construction of a second set of mainline tracks
11 parallel to and south of the Railroad’s existing tracks where they cross Picacho Boulevard. A new
12 siding will also be constructed to the north side of the existing mainline track so that, upon the
13 completion of construction, there will be three sets of tracks crossing Picacho Boulevard.
14 According to Mr. James Smith, the Railroad’s Manager of Industry and Public Projects, the third
15 set of tracks will be used as follows: as a short-term storage track to resolve out-of-order cars on
16 trains and enable the Railroad to place them in the correct order; to sidetrack slower-moving local
17 trains which run between local Arizona cities in order to permit faster-moving through-freight
18 trains to pass; and to sidetrack cars with mechanical issues so that they can be repaired quickly,
19 restored to service and have less impact on train operations. (Tr. at p. 26, 31 and 32)

20 8. Plans call for the Railroad to re-profile a portion of the two-lane asphalt roadway
21 where it meets the tracks and for the replacement of the existing automatic warning equipment with
22 new upgraded 12-inch LED flashing lights, gates and bells along with the construction of a new
23 concrete crossing surface. Any pavement markings affected by crossing alterations will be replaced.
24 Mr. Smith further related that the Picacho Boulevard crossing will utilize constant warning time
25 circuitry.³ (TR. at p. 27)

26
27 ² On May 8, 2008, Staff late-filed a copy of Exhibit “A” to the Chairman’s letter which lists all of the crossings, including
the Picacho Boulevard crossing, which have been approved for the Railroad’s double-track project in Pinal County.

28 ³ This safety feature helps alleviate a motorist’s wait at a crossing because gate arms are not lowered until approximately
20 to 30 seconds before a train’s approach to a crossing.

1 9. Based on an engineering report provided to the Railroad by HDR Engineering
2 ("HDR"), current traffic data indicates average daily traffic ("ADT") at the Picacho Boulevard
3 crossing is 287 vehicles per day. HDR did not provide any projections for future vehicular traffic.
4 The current Level of Service ("LOS") at the Picacho Boulevard crossing based on the standards of
5 the American Association of State Highway and Transportation Officials ("AASHTO") is LOS A, or
6 least congested.

7 10. According to the Staff Report, based on the records of Staff and the Federal Railroad
8 Administration ("FRA"), there has been only one accident at Picacho Boulevard, in 1987, with no
9 fatalities or injuries.

10 11. Staff's Railroad Crossing Inspector, Mr. Chris Watson, testified that he does not
11 believe a grade separation is necessary at the Picacho Boulevard crossing presently due to the lack of
12 vehicular traffic in the area. (Tr. at p. 13)

13 12. The estimated cost of the proposed upgrade to the Picacho Boulevard crossing is
14 \$295,980 which will be borne entirely by the Railroad.

15 13. According to the Staff Report, data from the Railroad establishes that there is an
16 average of 48 trains per day traveling through the aforementioned crossing and this number should
17 increase to approximately an average of 84 trains per day in 2016.

18 14. The Picacho Boulevard crossing is used as a school bus route approximately eleven
19 times per day during the school week.

20 15. There is no evidence that the improvements and upgrades to be made to the Picacho
21 Boulevard crossing will adversely impact the ability of area residents to reach area hospitals.

22 16. To further support its Application, the Railroad called as a witness, Mr. Dean Carlson,
23 a civil engineer who was employed by the Federal Highway Administration ("FHA") for 36 years
24 concluding his service as its Executive Director for his last five years with the agency.⁴

25 17. At the hearing, Mr. Carlson described his experience in creating legislation used to
26

27 ⁴ After he retired from the FHA, in 1994, Mr. Carlson was appointed by the Governor of Kansas to be Kansas' Secretary
28 of Transportation for a period of eight years. He also was a member of the Board of Directors of the AASHTO and
served as its president. In 2001, Mr. Carlson was elected to be a member of the National Academy of Engineering.

1 provide Federal funding for all types of highway improvements, including railroad crossings and
2 railroad grade separations.

3 18. Mr. Carlson testified that he had reviewed the Railroad's Application with respect to
4 the crossing described herein and stated that with the alterations, the upgrades planned for the
5 crossing would provide adequate safety for the public. (Tr. at p. 38)

6 19. Mr. Carlson believes that the utilization of an exposure index alone does not
7 accurately reflect safety conditions at a crossing and does not provide an adequate basis for decision
8 makers to determine whether to utilize grade separation at a crossing, but merely provides assistance
9 to establish priorities for crossing improvements. (Tr. at p. 40)

10 20. Mr. Carlson testified that grade separations involve a three-step process as follows:
11 physical capability to construct a grade separation; consideration of the exposure index; and then
12 consideration of cost/benefits. (Tr. at p. 41)

13 21. Mr. Carlson further testified that grade separation is a question of mobility and
14 convenience for drivers and not for safety. With respect to the Railroad's double track project, Mr.
15 Carlson stated further that there is no specific criteria to establish a grade-separated crossing and does
16 not believe grade separation is required at the Picacho Boulevard crossing. (Tr. at p. 42)

17 22. In further support of the Railroad's Application, Mr. Smith testified that the Railroad
18 has been working with Pinal County as the road authority to address any concerns which might arise
19 with respect to the Railroad's double track project. (Tr. at p. 28)

20 23. Staff is recommending that the Application be approved. In reaching its
21 recommendation, Staff considered the ADT, the LOS and the addition of upgraded safety equipment
22 which Staff finds are reasonable and in the public interest. Additionally, the local road authority
23 supports the Railroad's request for Commission approval to alter its crossing.

24 24. Staff's recommendations are reasonable and appropriate and the Railroad's
25 Application to alter the crossing at Picacho Boulevard should be approved as requested.

26 ...

27 ...

28

CONCLUSIONS OF LAW

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2 1. The Commission has jurisdiction over the parties and over the subject matter of the
3 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
4 40-337.01.

5 2. Notice of the Application was provided in accordance with the law.

6 3. Installation of the crossing upgrade is necessary for the public's convenience and
7 safety.

8 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
9 recommended by Staff.

10 5. After installation of the crossing upgrade, the Railroad should maintain the crossing in
11 accordance with A.A.C. R-14-5-104.

ORDER

12
13 IT IS THEREFORE ORDERED that the Union Pacific Railroad Company's Application is
14 hereby approved.

15 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the
16 Commission, in writing, within ten days of both the commencement and the completion of the
17 crossing upgrade.

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28

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall maintain the crossing at Picacho Boulevard in compliance with A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2008.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

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